REMARKS/ARGUMENTS

This Amendment is submitted in response to the Final Office Action dated December 21, 2006, and within the TWO MONTH period extending to February 21, 2007. The current status of the claims is summarized as follows:

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- Claims 17-20 and 22 are amended.

- Claims 4, 10-12, and 14 are cancelled.

- Claims 1-3, 5-9, 13, and 15-22 are pending in the application after entry of the present Amendment.

Finality of Office Action

10   The Applicant acknowledges the Office's indication that the Applicant's arguments in the Amendment dated September 14, 2006, were persuasive. The Applicant further acknowledges that the previous rejections under 35 U.S.C. 102 and 35 U.S.C. 103 have been withdrawn by the Office.

The Office has made a new ground of rejection under 35 U.S.C. 101. It should be

15   noted that prior to the outstanding Final Office Action, the Office had not raised an issue with regard to the claims being non-statutory under 35 U.S.C. 101. Because the outstanding rejection under 35 U.S.C. 101 is a new ground of rejection not necessitated by the Applicant's claim amendments, the Applicant submits that it is improper for the Office to make the outstanding Office Action final.

20   The Office asserts that the new rejections under 35 U.S.C. 101 were necessitated by the Applicant's claim amendments. However, this assertion is not supported by the facts. Specifically, in the Amendment of September 14, 2006, each of independent claims 1, 9, and 17 was amended to add the following wherein clause:

"wherein each of the first and second test execution requests includes commands specifically programmed to initiate a number of functional aspects of a software product to be tested."

The preambles of each of claims 1, 9, and 17 were unchanged. Also, there was no

5   substantial removal of claim features in either of independent claims 1, 9, and 17. Simply, stated, the statutory class of each of independent claims 1, 9, and 17 was not altered in any way by the Applicant's amendment of September 14, 2006. Therefore, the Office's assertion regarding the rejection of claims 1-3, 5-9, 13, and 15-22 under 35 U.S.C. 101 being necessitated by the Applicant's Amendment of September 14, 2006, is incorrect.

10   Consequently, the introduction of the new ground of rejection under 35 U.S.C. 101 should require the outstanding Office Action to be non-final. In view of the foregoing, the Office is requested to withdraw the finality of the outstanding Office Action. Additionally, because the outstanding Office Action should in fact be non-final, the Applicant requests the Office to allow entry of this Amendment.

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Rejections under 35 U.S.C. 101

Claims 1-3, 5-9, 13, and 15-22 were rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter. These rejections are traversed.

The Office has asserted that each of independent claims 1, 9, and 17 is directed to

20   an abstract idea. The Office further states that each of claims 1, 9, and 17 represents a data structure which does not produce a tangible result. The Applicants respectfully disagree with the Office's characterization of claims 1, 9, and 17.

With regard to claim 1, the method for launching remote test execution requests in a distributed test framework does not represent an abstract idea. The method includes an

25   operation for "launching the second test execution request on the identified computer

system having the attributes defined in the launch request." Launching of the second test execution request on the identified computer system is neither an idea nor an abstract idea. Moreover, launching of the second test execution request on the identified computer system represents an operation that causes transformation of an object in the physical

5   world. Simply stated the Office's characterization of claim 1 as representing an abstract idea is incorrect.

Claim 1 recites an operation that transforms a physical object to a different state. Specifically, the launching of the second test execution request on the identified computer system serves to transform the identified computer system to a different physical state.

10   Therefore, even if the Office inappropriately considers claim 1 to be an abstract idea, claim 1 still recites a practical application of an abstract idea, and is thus statutory under 35 U.S.C. 101.

The "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" (Official Gazette, November 22, 2005) state the following:

15   "To satisfy section 101 requirements, the claim must be for a practical application of the Sec. 101 judicial exception, which can be identified in various ways:

- The claimed invention 'transforms' an article or physical object to a different state or thing.

- The claimed invention otherwise produces a useful, concrete and

20   tangible result."

"To be statutory, a claimed process must either: (A) result in a physical transformation for which a practical application is either disclosed in the specification or would have been known to a skilled artisan, or (B) be limited to a practical application which produces a useful, tangible, and concrete result."

In view of the foregoing, the Applicants submit that claim 1 does in fact satisfy the requirements of 35 U.S.C. 101 with regard to eligible subject matter. Therefore, the Office is requested to withdraw the rejection of claim 1 under 35 U.S.C. 101.

Also, because a dependent claim incorporates each and every element of the independent claim from which it depends, the dependent claim is patentable for at least the same reasons as its independent claim. Therefore, the Applicants submit that dependent claims 2-3, 5-8, and 21 are patentable for at least the same reasons provided for claim 1. Therefore, the Office is requested to withdraw the rejections of claims 2-3, 5-8, and 21 under 35 U.S.C. 101.

Claim 9 recites a system for launching remote test execution requests in a distributed test framework. The system of claim 9 is not an abstract idea. Specifically, the system of claim 9 includes hardware. For example, claim 9 recites a first agent process executing on a first computer system. Claim 9 also recites that a first test execution request communicates with the first agent process. Based at least on the foregoing, the Applicant submits that claim 9 does not recite an abstract idea. Therefore, because claim 9 does not represent a 35 U.S.C. 101 judicial exception, there is no requirement that claim 9 recite a tangible result.

In view of the foregoing, the Applicants submit that claim 9 does in fact satisfy the requirements of 35 U.S.C. 101 with regard to eligible subject matter. Therefore, the Office is requested to withdraw the rejection of claim 9 under 35 U.S.C. 101.

The Applicants submit that dependent claims 13 and 15-16 are patentable for at least the same reasons provided for claim 9. Therefore, the Office is requested to withdraw the rejections of claims 13 and 15-16 under 35 U.S.C. 101.

Previously pending claim 17 recited a computer program embodied on a computer readable medium for launching remote test execution requests in a distributed test framework. For clarification, each of independent claim 17 and dependent claims 18-20 and 22 has been amended to recite a computer readable medium encoded with program

5   instructions for launching remote test execution requests in a distributed test framework. The Applicants submit that the computer readable medium of each of claims 17, 18-20, and 22 is neither an abstract idea, a law of nature, nor a natural phenomenon. Therefore, the computer readable medium of each of claims 17, 18-20, and 22 does not represent a 35 U.S.C. 101 judicial exception. Consequently, it is not appropriate to question as to

10   whether or not the computer readable medium of each of claims 17, 18-20, and 22 represents a practical application of a 35 U.S.C. 101 judicial exception that produces a useful, concrete, and tangible result. Furthermore, the "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" (Official Gazette, November 22, 2005) state the following:

15   "a computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory."

In view of the foregoing, the Applicants submit that each of claims 17, 18-20, and

20   22 does in fact satisfy the requirements of 35 U.S.C. 101 with regard to eligible subject matter. Therefore, the Office is requested to withdraw the rejection of each of claims 17, 18-20, and 22 under 35 U.S.C. 101.

In view of the foregoing, the Applicants submit that all of the pending claims are

25   in condition for allowance. Therefore, a Notice of Allowance is requested. If the

Examiner has any questions concerning the present Amendment, the Examiner is

requested to contact the undersigned at (408) 774-6914. If any additional fees are due in

connection with filing this Amendment, the Commissioner is also authorized to charge

Deposit Account No. 50-0805 (Order No. SUNMP030). A duplicate copy of the

5   transmittal is enclosed for this purpose.

Respectfully submitted,
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